

Hales, Dana

From: Hales, Dana
Sent: Tuesday, April 12, 2016 4:16 PM
To: Gocek, Jeffrey
Cc: Northridge, Jere (P.E.); Gaul, Andrew; Brian Trulear; Cruz, Francisco; Joel Blanco-Gonzalez
Subject: Wellsboro WWTP Revised Draft Permit (PA0021687)
Attachments: Compliance Schedules for WQBELs in NPDES Permits Memo.pdf

Jeffrey,

According to our Memorandum of Agreement, the Environmental Protection Agency (EPA) Region III has received the draft National Pollutant Discharge Elimination System (NPDES) permit for:

Wellsboro WWTP

NPDES Number: PA0021687

EPA Received: February 29, 2016

This is a major permit that discharges to Marsh Creek, which is being revised to address changes and comments submitted on the previous draft for this permit. I have completed my review and offer the following comments:

1. The draft permit proposed the following language for the CSO WQBEL:
"According to the permittee's approved Long Term Control Plan (LTCP), the permittee plans to discharge a long term average of four to six overflows events per year, with the goal of complying with the Presumptive Approach by 2026, unless additional controls are required at that time."
The proposed language offers the permittee a compliance schedule through 2026 to implement the LTCP and meet the WQBEL; however, no schedule in accordance with 40 CFR 122.47 was included in the permit and no discussion was provided in the fact sheet regarding the appropriateness of having such a schedule (i.e., addressing how the permit meets PADEP's regulation at 25 Pa Code 92a.51, as well as the ability of a permit to include a schedule for complying with water quality standards no later than the date allowed under the state's water quality standards). As described in EPA's 2007 Hanlon memo (attached), if PA's water quality standards (such as those for bacteria) were in place prior to 1977 a compliance schedule in the permit isn't appropriate (Star-Kist decision) to meet those standards. In these cases, any need for a schedule should be handled through a separate enforcement document. Therefore, we believe that the WQBEL needs to be stated directly in the permit, as recommended below:
"The permittee shall discharge no more than an average of 4-6 overflow events per year." Typically, we would recommend that the appropriate number (4,5, or 6) of overflow events be included in the permit.
2. One of the draft permit documents submitted for review provides a one page summary of 5 CSO outfalls (001-005) for this facility on page 2A. It is unclear what this document is for, since page 6 of the draft permit only documents 2 CSO outfalls (002 and 003). Please clarify.
3. The public notice for this draft permit did not address the WER used for the development of effluent limits for copper, but the public notice for the previous 2015 draft permit did. After conferring with our water quality standards staff (Denise Hakowski), this will be adequate to address the WER public notice requirements. However, for future reference, we wanted to clarify that any time a permit includes a WER in the development of a permit limit, use of the WER should be included in the public notice (even if was previously public noticed).
4. The compliance schedule for TRC will need to be modified. As written (see below), the permittee only needs to comply with the 3-year schedule IF it does not opt to conduct site-specific studies; however, a compliance schedule cannot be afforded solely for the development of site specific criteria. The paragraph will need to be

re-stated to address the schedule for meeting the final copper WQBEL, which can include an option to conduct site-specific studies *in addition* to those milestones.

"A. Compliance Schedule

The permittee shall achieve compliance with the final water quality based effluent limitations (WQBELs) for TRC on Page 4 in accordance with the following schedule.

Schedule Activity	Target Compliance Period	Proposed Compliance Date
<i>Submit WQM permit application</i>	<i>12 months from Permit Effective Date</i>	<i>June 01, 2017</i>
<i>Begin upgrade construction</i>	<i>24 months from Permit Effective Date</i>	<i>June 01, 2018</i>
<i>Compliance with effluent limitations</i>	<i>36 months from Permit Effective Date</i>	<i>June 01, 2019</i>

The schedule can vary depending on the permittee's choice of whether to conduct site-specific studies as discussed below.

- 1. If the permittee decides to conduct site-specific studies, the permittee shall notify DEP in writing within 60 days of permit issuance and submit the study results within 18 months of permit issuance.*
- 2. If DEP agrees that, as a result of the studies, modifications to the WQBELs for TRC are appropriate, DEP will prepare and issue a draft permit amendment to the permittee, publish notice of the draft permit in the Pennsylvania Bulletin, and following the comment period issue a final permit amendment. DEP may also amend the schedule to achieve compliance with final TRC limits in the permit amendment.*
- 3. If the permittee decides not to conduct site-specific studies, the permittee shall achieve compliance with the final TRC limits thirty six months (three years) following the permit effective date."*

Please address the above and provide me with any changes to the draft permit and/or Fact Sheet, if necessary.

Thank you,
Dana

Please note that my email has changed to hales.dana@epa.gov.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 10 2007

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits

FROM: James A. Hanlon, Director
Office of Wastewater Management

TO: Alexis Strauss, Director
Water Division
EPA Region 9

Recently, in discussions with Region 9, questions have been raised concerning the use of compliance schedules in National Pollutant Discharge Elimination System (NPDES) permits consistent with the Clean Water Act (CWA) and its implementing regulations at 40 C.F.R. § 122.47. The use of compliance schedules in NPDES permits is also the subject of ongoing litigation in California. The purpose of this memo is to provide a framework for the review of permits consistent with the CWA and its implementing regulations.

When may a permitting authority include a compliance schedule in a permit for the purpose of achieving a water quality-based effluent limitation?

In *In The Matter of Star-Kist Caribe, Inc.*, 3 E.A.D. 172, 175, 177 (1990), the EPA Administrator interpreted section 301(b)(1)(C) of the CWA to mean that 1) after July 1, 1977, permits must require immediate compliance with (*i.e.*, may not contain compliance schedules for) effluent limitations based on water quality standards adopted before July 1, 1977, and 2) compliance schedules are allowed for effluent limitations based on standards adopted after that date only if the State has clearly indicated in its water quality standards or implementing regulations that it intends to allow them.

What principles are applicable to assessing whether a compliance schedule for achieving a water quality-based effluent limitation is consistent with the CWA and its implementing regulations?

1. "When appropriate," NPDES permits may include "a schedule of compliance leading to compliance with CWA and regulations . . . as soon as possible, but not later than the applicable statutory deadline under the CWA." 40 C.F.R. § 122.47(a)(1). Compliance schedules that are longer than one year in duration must set forth interim requirements and dates for their achievement. 40 C.F.R. § 122.47(a)(3).

2. Any compliance schedule contained in an NPDES permit must be an "enforceable sequence of actions or operations leading to compliance with a [water quality-based] effluent limitation ["WQBEL"]" as required by the definition of "schedule of compliance" in section 502(17) of the CWA. *See also* 40 C.F.R. § 122.2 (definition of schedule of compliance).

3. Any compliance schedule contained in an NPDES permit must include an enforceable final effluent limitation and a date for its achievement that is within the timeframe allowed by the applicable state or federal law provision authorizing compliance schedules as required by CWA sections 301(b)(1)(C); 502(17); the Administrator's decision in *Star-Kist Caribe, Inc.* 3 E.A.D. 172, 175, 177-178 (1990); and EPA regulations at 40 C.F.R. §§ 122.2, 122.44(d) and 122.44(d)(1)(vii)(A).

4. Any compliance schedule that extends past the expiration date of a permit must include the final effluent limitations in the permit in order to ensure enforceability of the compliance schedule as required by CWA section 502(17) and 40 C.F.R. § 122.2 (definition of schedule of compliance).

5. In order to grant a compliance schedule in an NPDES permit, the permitting authority has to make a reasonable finding, adequately supported by the administrative record, that the compliance schedule "will lead[] to compliance with an effluent limitation . . ." "to meet water quality standards" by the end of the compliance schedule as required by sections 301(b)(1)(C) and 502(17) of the CWA. *See also* 40 C.F.R. §§ 122.2, 122.44(d)(1)(vii)(A).

6. In order to grant a compliance schedule in an NPDES permit, the permitting authority has to make a reasonable finding, adequately supported by the administrative record and described in the fact sheet (40 C.F.R. § 124.8), that a compliance schedule is "appropriate" and that compliance with the final WQBEL is required "as soon as possible." *See* 40 C.F.R. §§ 122.47(a), 122.47(a)(1).

7. In order to grant a compliance schedule in an NPDES permit, the permitting authority has to make a reasonable finding, adequately supported by the administrative record, that the discharger cannot immediately comply with the WQBEL upon the effective date of the permit. 40 C.F.R. §§ 122.47, 122.47(a)(1).

8. Factors relevant to whether a compliance schedule in a specific permit is "appropriate" under 40 C.F.R. § 122.47(a) include: how much time the discharger has already had to meet the WQBEL(s) under prior permits; the extent to which the discharger has made good faith efforts to comply with the WQBELs and other requirements in its prior permit(s); whether there is any need for modifications to treatment facilities, operations or measures to meet the WQBELs and if so, how long would it take to implement the modifications to treatment, operations or other measures; or whether the discharger would be expected to use the same treatment facilities, operations or other measures to meet the WQBEL as it would have used to meet the WQBEL in its prior permit.

9. Factors relevant to a conclusion that a particular compliance schedule requires compliance with the WQBEL "as soon as possible," as required by 40 C.F.R. § 122.47(a)(1) include: consideration of the steps needed to modify or install treatment facilities, operations or other measures and the time those steps would take. The permitting authority should not simply presume that a compliance schedule be based on the maximum time period allowed by a State's authorizing provision.

10. A compliance schedule based solely on time needed to develop a Total Maximum Daily Load is not appropriate, consistent with EPA's letter of October 23, 2006, to Celeste Cantu, Executive Director of the California State Water Resources Control Board, in which EPA disapproved a provision of the Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries for California.

11. A compliance schedule based solely on time needed to develop a Use Attainability Analysis is also not appropriate, consistent with EPA's letter of February 20, 2007, to Doyle Childers, Director Missouri Department of Natural Resources, nor is a compliance schedule based solely on time needed to develop a site specific criterion, for the same reasons as set forth in the October 23, 2006, (referenced in Paragraph 10) and February 20, 2007 letters.

If you have any questions, please contact me at (202) 564-0748 or have your staff contact Linda Boornazian at (202) 564-0221.

